

BEFORE THE STATE OF OREGON
OREGON HEALTH AUTHORITY
CENTER FOR HEALTH PROTECTION

In the Matter of

Pudding Creek Land Co./Pleasant Hill
Shopping Center water system, PWS
OR4191865

Respondent

NOTICE OF VIOLATION AND
ADMINISTRATIVE ORDER

To: Carolyn S. Chambers
Pudding Creek Land Co.
Pleasant Hill shopping Center
PO Box 640
Pleasant Hill, OR 97455

Pudding Creek Land Co. (Pudding Creek) is a water supplier as defined in Oregon Revised Statute (ORS) 448.115(12) and Oregon Administrative Rule (OAR) 333-061-0020(211), and as a water supplier, has specific responsibilities that are identified in OAR 333-061-0025.

Pudding Creek has at all times mentioned herein owned and operated the Pleasant Hill Shopping Center (Pleasant Hill) public water system. The Pleasant Hill water system is a non-transient non-community water system serving between 301 and 1,500 people at 35831 Highway 58 in Pleasant Hill, Oregon, and is subject to regulation under ORS 448.115 to 448.290 and OAR 333-061-0005 to 333-061-0290.

Pursuant to its authority under ORS 448.150, the Oregon Health Authority, Public Health Division, Center for Health Protection, Drinking Water Program (Program) has investigated the operation of the Pleasant Hill water system.

The Program found, during its investigation, that water provided by the Pleasant Hill water system exceeds the action level (AL) for lead and for copper. Specifically: the average lead concentration in tap water samples collected between June 17, 2010 and May 2, 2012 is 0.0394 mg/L, which exceeds the AL for lead of 0.015 mg/L; and the average copper concentration in tap water samples collected between June 17, 2010 and May 2, 2012 is 5.764 mg/L, which exceeds the AL for copper of 1.3 mg/L. Pudding Creek is therefore unable to assure the water users at the Pleasant Hill water system that the water is sufficiently free from contaminants such that individuals will not be exposed to disease or harmful physiological effects (ORS 448.115(8)). This represents a potential public health hazard.

This Notice of Violation and Administrative Order (Order) is being issued to Pudding Creek for the specific violations of the Oregon Drinking Water Quality Act (ORS 448.115 to ORS 448.290) and rules found during the Program's investigation as described below.

DESCRIPTION OF RULE VIOLATIONS

- Violation No. 1: OAR 333-061-0025 requires, in part, that water suppliers take all reasonable precautions to assure that water system facilities are free of public health hazards. Drinking water with a concentration of lead or copper in excess of the AL represents a public health hazard as defined by OAR 333-061-0020(156), but Pudding River has not taken all the possible precautions at the Pleasant Hill water system to assure that the ALs for lead and for copper are not exceeded. This constitutes a violation of OAR 333-061-0025.

Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

- Violation No. 2: OAR 333-061-0034(5) requires water systems to deliver public education materials when a water system's sample results exceed the AL for lead. This requirement is separate from any other requirement to publish public notice for lead. To date, copies of public education materials have not been submitted to the Program since the June 17, 2010 sample results indicated the ALs for lead and copper were exceeded, which constitutes a violation of OAR 333-061-0034(2).

ACTIONS REQUIRED TO ACHIEVE COMPLIANCE

Pudding Creek is required to conduct the remedial actions described below which, if taken within the time specified in this Order, will effect compliance with the rule(s) violated (ORS 448.255(3)).

- Compliance Action No. 1: Pudding Creek must immediately publish public education materials in accordance with OAR 333-061-0034(5) and must submit a copy of the public education materials to the Program prior to delivery to water users and no later than July 31, 2012. Pudding Creek must thereafter continue to publish public education materials in accordance with OAR 333-061-0034(5) and according to the timeframes identified in OAR 333-061-0034(5)(c) until the completion of all other activities specified in this Order.
- Compliance Action No. 2: Pudding Creek must submit construction plans to the Program no later than August 15, 2012 for the necessary infrastructure changes so that the Pleasant Hill water system will comply with the ALs for lead and copper. The plans shall meet all the applicable requirements of OAR 333-061-0060, and have sufficient detail to completely and clearly illustrate what will be constructed.
 - The plans must clearly indicate that one of the following methods of corrosion control specified by the Program will be installed and constructed at the Pleasant Hill water system:
 1. Aeration;
 2. Caustic soda;
 3. Potash; or
 4. Soda ash.
 - Plan review materials must be submitted to: Marsha Fox, DHS – Drinking Water Program, PO Box 14450, Portland, OR 97293-0450.

- Compliance Action No. 3: Pudding Creek must complete construction and installation of the project approved in accordance with Compliance Action No. 2 no later than August 31, 2012.
 - Any related physical or infrastructure changes at the Pleasant Hill water system must meet the applicable construction standards specified in OAR 333-061-0050.
- Compliance Action No. 4: Pudding Creek must demonstrate compliance with the ALs for lead and copper by reporting the results of two rounds of tap water samples collected at the Pleasant Hill water system in accordance with OAR 333-061-0036(2)(c). The sampling results must clearly indicate that the concentrations of lead and copper in tap water do not exceed the ALs for lead and copper as prescribed by OAR 333-061-0030(1). The tap water sampling results must be reported according to the following schedule:
 - The first round of samples must be collected no later than December 31, 2012, and the results reported to the Program no later than January 10, 2013.
 - The second round of samples must be collected no later than March 31, 2013, and the results reported to the Program no later than April 10, 2013.

GENERAL PROVISIONS AND CIVIL PENALTIES

This Order does not constitute a waiver, suspension or modification of the requirements of the Oregon Drinking Water Quality Act; ORS 448.115 to 448.290 and administrative rules OAR 333-061-0005 to 333-061-0290, which remain in full force and effect.

This Order does not relieve Pudding Creek of any responsibilities or liabilities established pursuant to any applicable federal, state, or local law or regulation.

Issuance of this Order is not an election by the Program to forgo any civil actions authorized under the Oregon Drinking Water Quality Act.

Failure to comply with any of the requirements in this Order by the specified due date may result in additional enforcement action, which could include assessment of civil penalties in the amount of \$150 per day per violation (OAR 333-061-0090). Civil penalties may be assessed beginning the day following the date of service of this Order and accruing through the date when the Program issues a Notice of Intent to Impose Civil Penalty.

Pursuant to ORS 448.990(2), violations of a rule of the Oregon Health Authority may be a crime in Oregon and punishable as a Class A misdemeanor.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedure Act (Oregon Revised Statutes, Chapter 183). If you want a hearing you must file a written request for hearing with the Program within 10 days from the date this Order was mailed. **The request for hearing must be sent to: David E. Leland, Manager; OHA - Drinking Water Program; PO Box 14450; Portland, OR 97293.**

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

If you do not make a timely request for a hearing, the Notice of Violation and Administrative Order will become final and effective 11 days after the date this Order was mailed. If the Order becomes final in this manner, you will have the right to appeal the order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 71 days from the day this order was mailed. If you do not file a petition for judicial review within the 71-day time period, you will lose your right to appeal.

If you do not request a hearing and the Program subsequently issues a Notice Imposing a Civil Penalty, you will have waived any right to contest the violations.

If you withdraw a request for hearing, or notify the Program or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Program may issue a final order by default. If the Order becomes final in this manner, you will have the right to appeal the Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was mailed. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.


The Program has designated the Program's complete file on the Pleasant Hill shopping Center water system as the record in this case for purposes of proving a prima facie case upon default.

Pleasant Hill Shopping Center

Page 6

If you need to receive the information in this letter in an alternate format, or if you have any questions about the requirements in this Order, please contact Brad K. Daniels at 971-673-0405.

Dated this 6th day of July, 2012.



Gail R. Shibley, JD, Administrator
Center for Health Protection

cc: Katrinka Danielson, Lane County Environmental Health
Casey Lyon, OHA-DWP
Randy Reitz, Oregon Water Services/Pleasant Hill Shopping Center

DATE of Service: July 6, 2012


Brad K. Daniels

By certified mail and first class mail